

HOUSE BILL 835

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO INSURANCE; REVISING REQUIREMENTS FOR BAIL BONDSMAN  
LICENSE, PROHIBITED PRACTICES OF BAIL BONDSMEN AND GROUNDS FOR  
DENIAL, SUSPENSION, REVOCATION AND REFUSAL TO CONTINUE BAIL  
BONDSMAN LICENSE; AMENDING THE BAIL BONDSMEN LICENSING LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-51-1 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 928) is amended to read:

"59A-51-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,  
Article 51 NMSA 1978 may be cited as the "Bail Bondsmen  
Licensing Law"."

Section 2. Section 59A-51-4 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 931, as amended by Laws 1999, Chapter 272,  
Section 25 and also by Laws 1999, Chapter 289, Section 38) is  
amended to read:

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1 "59A-51-4. QUALIFICATIONS FOR LICENSE.--Applicants for  
2 license as bail bondsman or solicitor pursuant to the  
3 provisions of [~~Chapter 59A, Article 51 NMSA 1978 must not be~~  
4 ~~law enforcement, adjudication or prosecution officials or their~~  
5 ~~employees, attorneys-at-law, officials authorized to admit to~~  
6 ~~bail, or state or county officers, and must]~~ the Bail Bondsmen  
7 Licensing Law shall be qualified as follows:

8 A. [~~is~~] be an individual not less than eighteen  
9 years of age;

10 B. [~~is~~] be a citizen of the United States;

11 C. not have been convicted of a felony, entered a  
12 guilty plea to a felony, accepted a plea of nolo contendere to  
13 a felony, or engaged in or committed an act proscribed in  
14 Section 59A-51-14 or 59A-51-13 NMSA 1978;

15 D. not be a law enforcement, adjudication or  
16 prosecution official or their employee or an attorney, official  
17 authorized to admit to bail, or state or county officer;

18 [~~G.~~] E. if for license as bondsman, [~~must take and~~]  
19 pass [~~to the superintendent's satisfaction~~] a written  
20 examination testing [~~his~~] the applicant's knowledge and  
21 competence to engage in the bail bondsman business;

22 [~~D. is~~] F. be of good personal and business  
23 reputation;

24 [~~E.~~] G. if to act as a property bondsman, [~~must~~] be  
25 financially responsible and provide the surety bond or deposit

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1 in lieu thereof as required in accordance with Section 59A-51-8  
2 NMSA 1978;

3 ~~[F.]~~ H. if to act as a limited surety agent, ~~[must]~~  
4 be appointed by an authorized surety insurer ~~[subject to~~  
5 ~~issuance of a license, and meet all applicable qualifications~~  
6 ~~as for licensing as an agent of an insurer as stated in Section~~  
7 ~~59A-12-12 NMSA 1978]~~; and

8 ~~[G.]~~ I. if for license as a solicitor, ~~[must]~~ have  
9 been so appointed by a licensed bail bondsman subject to  
10 issuance of the solicitor license."

11 Section 3. Section 59A-51-13 NMSA 1978 (being Laws 1984,  
12 Chapter 127, Section 940, as amended) is amended to read:

13 "59A-51-13. PRACTICES.--

14 A. ~~[No]~~ A bail bondsman or solicitor shall not:

15 (1) suggest or advise the employment of or  
16 name for employment any particular attorney to represent his  
17 principal;

18 (2) pay a fee or rebate or give or promise  
19 anything of value to a jailer, policeman, peace officer,  
20 committing magistrate or any other person who has power to  
21 arrest or to hold in custody or to any public official or  
22 public employee in order to secure a settlement, compromise,  
23 remission or reduction of the amount of any bail bond or  
24 estreatment thereof or to secure delay or other advantage;

25 (3) pay a fee or rebate or give anything of

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1 value to an attorney in bail bond matters, except in defense of  
2 any action on a bond;

3 (4) pay a fee or rebate or give or promise  
4 anything of value to the principal or anyone in his behalf;

5 (5) participate in the capacity of an attorney  
6 at a trial or hearing of one on whose bond he is surety; ~~[or]~~

7 (6) except for the premium received for the  
8 bond, fail to return any collateral security within fourteen  
9 calendar days after receipt of a copy of the court order that  
10 results in the termination of liability on the bond, as  
11 evidenced by a receipt of the judgment and sentence in the  
12 case, a certificate of discharge or an order releasing the  
13 bond; or

14 ~~[(6)]~~ (7) charge or accept anything of value  
15 ~~[from a principal]~~ except the filed and approved premium ~~[which~~  
16 ~~may be paid in cash or property; provided that the bondsman~~  
17 ~~shall be permitted to]~~ on the bond, but the bondsman may accept  
18 collateral security or other indemnity ~~[from the principal,~~  
19 ~~which shall be returned upon final termination of liability on~~  
20 ~~the bond. Such] if:~~

21 (a) such collateral security or other  
22 indemnity ~~[required by the bondsman must be]~~ is reasonable in  
23 relation to the amount of the bond;

24 (b) no collateral or security in  
25 tangible property is taken by pledge or debt instrument that

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1 allows retention, sale or other disposition of such property  
2 upon default of premium payment;

3 (c) no collateral or security interest  
4 in real property is taken by deed or any other instrument  
5 unless the bail bondsman's interest in the property is limited  
6 to one hundred percent of the amount of the bond;

7 (d) the collateral or security taken by  
8 the bondsman is not pledged directly to any court as security  
9 for an appearance bond; and

10 (e) the person from whom the collateral  
11 or security is taken is given a receipt describing the  
12 condition of the collateral or security at the time it is taken  
13 into the custody of the bondsman.

14 B. When a bail bondsman accepts cash as collateral,  
15 he shall deposit [~~such~~] the cash in his trust account and give  
16 a written receipt for same, and this receipt shall give in  
17 detail a full account of the collateral received.

18 C. Law enforcement, adjudication and prosecution  
19 officials and their employees, attorneys-at-law, officials  
20 authorized to admit to bail and state and county officers shall  
21 not directly or indirectly receive any benefits from the  
22 execution of any bail bond.

23 D. A bail bondsman shall not sign nor countersign  
24 in blank any bond, nor shall he give a power of attorney to or  
25 otherwise authorize anyone to countersign his name to bonds

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1 unless the person so authorized is a licensed bondsman directly  
2 employed by the bondsman giving such power of attorney.

3 E. No bail bond agency shall advertise as or hold  
4 itself out to be a surety insurer.

5 F. Every bail bondsman shall have a permanent  
6 street address and all bail bond business shall be conducted  
7 from that address.

8 G. Every bail bondsman shall transact all bail bond  
9 business, surety or property, in the bondsman's proper  
10 individual name or one agency name as stated on the application  
11 for license and on the license as issued by the superintendent.

12 H. Every bail bondsman is responsible for:

13 (1) the bondman's own conduct and that of the  
14 bondsman's solicitor in the course of recovery activities; and

15 (2) ensuring that proper recovery training has  
16 been completed and all required certification is current."

17 Section 4. Section 59A-51-14 NMSA 1978 (being Laws 1984,  
18 Chapter 127, Section 941, as amended) is amended to read:

19 "59A-51-14. DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO  
20 CONTINUE LICENSE.--

21 A. The superintendent may deny, suspend, revoke or  
22 refuse to continue any license issued under [~~Chapter 59A,~~  
23 ~~Article 51 NMSA 1978]~~ the Bail Bondsmen Licensing Law for any  
24 of the following [~~causes or for any violation of the laws of~~  
25 ~~this state relating to bail or the bail bond business]~~ reasons:

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1                   (1) [~~for~~] any cause for which issuance of the  
2 license could have been refused had it then existed and been  
3 known to the superintendent;

4                   (2) a material misstatement, misrepresentation  
5 or fraud in obtaining the license;

6                   (3) any violation of the laws of this state  
7 relating to bail or the bail bond business;

8                   (4) conviction of any felony, regardless of  
9 whether the conviction resulted from conduct related to the  
10 bail bond business;

11                   (5) service of a sentence upon a conviction of  
12 any felony in a correctional facility, city or county jail or  
13 community correctional facility, or under the supervision of  
14 the parole board or any probation department;

15                   [~~(3)~~] (6) misappropriation, conversion or  
16 unlawful withholding of money belonging to insurers or others  
17 and received in the conduct of business under the license;

18                   [~~(4)~~] (7) fraudulent or dishonest practices in  
19 the conduct of business under the license;

20                   [~~(5) willful~~] (8) failure to comply with, or  
21 willful violation of any provision of the Bail Bondsmen  
22 Licensing Law or proper order, rule or regulation of the  
23 superintendent or any court of this state;

24                   (9) any activity prohibited in Section  
25 59A-51-13 NMSA 1978;

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1                    [~~(6)~~] (10) failure or refusal, upon demand, to  
2 pay over to any insurer he represented, any money coming into  
3 his hands belonging to the insurer;

4                    [~~(7) willful failure to return collateral~~  
5 ~~security to the principal when the principal is entitled~~  
6 ~~thereto;~~]

7                    (11) failure to preserve without use and  
8 retain separately or to return collateral taken as security on  
9 any bond to the principal, indemnitor or depositor of  
10 collateral when the principal, indemnitor or depositor is  
11 entitled to such collateral;

12                    [~~(8)~~] (12) for knowingly having in [~~his~~] the  
13 bail bondsman's employ a person whose bail bond business  
14 license has been revoked, suspended or denied in this or any  
15 other state; or

16                    [~~(9) willful~~] (13) failure, neglect or  
17 refusal to supervise a solicitor's activities [~~in his~~] on the  
18 bail bondsman's behalf.

19                    B. When, in the judgment of the superintendent, the  
20 licensee in the conduct of affairs under the license has  
21 demonstrated incompetency, untrustworthiness, conduct or  
22 practices rendering him unfit to engage in the bail bond  
23 business, or making his continuance in such business  
24 detrimental to the public interest, or that he is no longer in  
25 good faith engaged in the bail bond business, or that he is

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1 guilty of rebating, or offering to rebate his commissions in  
2 the case of limited surety agents or premiums in the case of  
3 professional bondsmen, and for such reasons is found by the  
4 superintendent to be a source of detriment, injury or loss to  
5 the public, he shall revoke or suspend the license.

6 C. In case of the suspension or revocation of  
7 license of any bail bondsman, the license of any or all other  
8 bail bondsmen who are members of the same agency and any or all  
9 solicitors employed by such agency, who knowingly were parties  
10 to the act that formed the ground for the suspension or  
11 revocation shall likewise be suspended or revoked, except for  
12 the purpose of completing pending matters, and those persons  
13 who knowingly were parties to the act are prohibited from being  
14 licensed as a member of or bail bondsman or solicitor for some  
15 other agency.

16 D. No license under [~~Chapter 59A, Article 51 NMSA~~  
17 ~~1978~~] the Bail Bondsmen Licensing Law shall be issued, renewed  
18 or permitted to exist when the same is used directly or  
19 indirectly to circumvent the provisions of [~~that article~~] the  
20 Bail Bondsmen Licensing Law."